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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,256	09/20/2003	Shree K. Kurup	KURUP-3	6918
7590 ROBERT NATHANS 36 STAG DRIVE BILLERICA, MA 01821				
EXAMINER				
LEGESSE, NINT F				
ART UNIT		PAPER NUMBER		
3711				
MAIL DATE		DELIVERY MODE		
06/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/665,256

**Applicant(s)**

KURUP, SHREE K.

**Examiner**

Nini Legesse

**Art Unit**

3711

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 41-49, 55 and 56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-49, 55, and 56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Applicant's response to the office action of 12/17/07 is acknowledged on 03/13/08.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 41-49, 54 and 55** are rejected under 35 U.S.C. 103(a) as being unpatentable Chunga (US Patent No. 3,758,202) in view of over Mack (US Patent No. 5,764,338).

**Regarding claims 41, 42, and 45**, Chunga discloses a frameless eye device (since Applicant appears not to consider the support segment (5) of the instant application as a frame, Examiner has considered element (15) of the Chunga device as being frameless. See Figs. 1-4). Chunga fails to disclose a message element on the eye. However Mack discloses an eye device that includes a message (see Fig. 7 and see column 4 line 52). The reference also discloses that the type of eyeglasses is immaterial to the invention and that a variety of forms and styles of eyeglasses with different type of frames and lens is well known (see column 4 lines 30-43). Thus, it would have been obvious to one of ordinary skill in the art to modify the Chunga eye device to include a message or a name as taught by Mack in order to attract attention as stated in column 1 lines 39-40 of the Mack reference. During normal use and

operation of the Chunga in view of Mack device, the method as claimed by Applicant would obviously be performed.

**Regarding claims 43, 44, 46-49, and 54-56**, even though the reference do not disclose the use of an old discarded lens, it would have been obvious to one of ordinary skill in the art to use such types of lens in order to reduce the manufacturing cost of the eye device.

### ***Response to Arguments***

Applicant's arguments, see argument, filed 03/13/08, with respect to the Craig (US Patent No. 4,122,847) in view of Mack (US Patent No. 5,764,338) have been fully considered and are persuasive. The rejection of claims 41, 42, and 45 by these references combination has been withdrawn. However, Applicant's arguments with respect to the rejection of the claims with the Chunga (US Patent No. 3,758,202) in view of Mack (US Patent No. 5,764,338) have been fully considered but they are not persuasive. Applicant argues that the Chunga device has no room to provide for carrying a socially interactive message during vigorous activity. Applicant cannot show non-obviousness by attaching references individually where, as here, the rejection is based on combinations of references. As stated in the rejection above, the primary reference, Chunga, discloses the invention as recited but failed to teach the use of attention getting message on the device. The Mack device as stated in the above rejection discloses the use of a message and the combination of these references clearly teaches the claimed features (see rejection above).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the device to be used during dancing or swimming) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In addition, there is no reason to believe that the Chunga in view of Mack device could not be used in dancing since it could fall off and that the combination of the references could not have expectation of success as stated by Applicant on page 7 of his argument.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3711

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini Legesse whose telephone number is (571) 272-4412. The examiner can normally be reached on 9 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nini Legesse/  
Primary Examiner, Art Unit 3711